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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MIGUEL TORRES-ALONZO, Plaintiff, v. UNITED STATES OF AMERICA, et al., Defendant.	)	Case No. 08cv0242-WQH (NLS) ANSWER TO COMPLAINT

COMES NOW the Defendant, by and through its counsel, Karen P. Hewitt, United States Attorney, and David B. Wallace, Assistant United States Attorney, and in answer to Plaintiff's Complaint, set forth the following:

1. Answering Paragraph 1 of the complaint, Defendant alleges that the allegations therein constitute Plaintiff's characterization of his claim or legal conclusions to which no answer is required. To the extent an answer is required said allegations are denied.

2 Answering Paragraph 2 of the complaint, Defendant alleges that the allegations therein constitute Plaintiff's characterization of his claim or legal conclusions to which no answer is required. To the extent an answer is required said allegations are denied.

3. Answering Paragraph 3 of the complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and based thereon, denies generally and specifically each, all and every allegation contained therein.

4. Answering Paragraph 4 of the complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and based thereon, denies generally and specifically each, all and every allegation contained therein.

5. Answering Paragraph 5 of the complaint, Defendant admits the substantial truth of the allegations contained in sentences one and two thereof, but alleges that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein contained, and based thereon, denies generally and specifically each, all and every remaining allegation contained therein.

6. Answering Paragraph 6 of the complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and based thereon, denies generally and specifically each, all and every allegation contained therein.

7. Answering Paragraph 7 of the complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and based thereon, denies generally and specifically each, all and every allegation contained therein.

8. Answering Paragraph 8 of the complaint, Defendant alleges that the allegations contained therein are legal conclusions solely within the purview of the court and for its determination, and no answer is therefore required. To the extent an answer is required, Defendant denies each, all, and every allegation contained therein, except that Defendant admits that Plaintiff filed an administrative claim under FTCA against Defendant on July 2, 2007 and Defendant rejected Plaintiff's timely claim.

9. Answering Paragraph 9 of the complaint, Defendant alleges that the allegations contained therein are legal conclusions solely within the purview of the court and for its determination, and no answer is therefore required. To the extent an answer is required, said allegations are denied.

10. Answering Paragraph 10 of the complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and based thereon, denies generally and specifically each, all and every allegation contained therein.

11. Answering Paragraph 11 of the complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and based thereon, denies generally and specifically each, all and every allegation contained therein.

12. Answering Paragraph 12 of the complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and based thereon, denies generally and specifically each, all and every allegation contained therein.

13. Answering Paragraph 13 of the complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and based thereon, denies generally and specifically each, all and every allegation contained therein. Furthermore, Defendant alleges that the allegations contained therein are legal conclusions solely within the purview of the court and for its determination, and no answer is therefore required. To the extent an answer is required, said allegations are denied.

14. Answering Paragraph 14 of the complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and based thereon, denies generally and specifically each, all and every allegation contained therein.

15. Answering Paragraph 15 of the complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and based thereon, denies generally and specifically each, all and every allegation contained therein. Furthermore, Defendant alleges that the allegations contained therein are legal conclusions solely within the purview of the court and for its determination, and no answer is therefore required. To the extent an answer is required, said allegations are denied.

16. Answering Paragraph 16 of the complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and based thereon, denies generally and specifically each, all and every allegation contained therein. Furthermore, Defendant alleges that the allegations contained therein are legal conclusions solely within the purview of the court and for its determination, and no answer is therefore required. To the extent an answer is required, said allegations are denied.

17. Answering Paragraph 17 of the complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and based thereon, denies generally and specifically each, all and every allegation contained therein. Furthermore, Defendant alleges that the allegations contained therein are legal conclusions solely within the purview

of the court and for its determination, and no answer is therefore required. To the extent an answer is required, said allegations are denied.

18. Answering Paragraph 18 of the complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and based thereon, denies generally and specifically each, all and every allegation contained therein. Furthermore, Defendant alleges that the allegations contained therein are legal conclusions solely within the purview of the court and for its determination, and no answer is therefore required. To the extent an answer is required, said allegations are denied.

19. Answering Paragraph 19 of the complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and based thereon, denies generally and specifically each, all and every allegation contained therein. Furthermore, Defendant alleges that the allegations contained therein are legal conclusions solely within the purview of the court and for its determination, and no answer is therefore required. To the extent an answer is required, said allegations are denied.

20. Answering Paragraph 20 of the complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and based thereon, denies generally and specifically each, all and every allegation contained therein.

21. Answering Paragraph 21 of the complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and based thereon, denies generally and specifically each, all and every allegation contained therein.

22. Answering Paragraph 22 of the complaint, Defendant realleges Paragraphs 1-21 of its answers to Paragraphs 1-21 of Plaintiff's Complaint, and by this reference incorporates them herein as though set forth in full.

23. Answering Paragraph 23 of the complaint, defendant admits the substantial truth of the allegations contained therein.

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24. Answering Paragraph 24 of the complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and based thereon, denies generally and specifically each, all and every allegation contained therein. Furthermore, Defendant alleges that the allegations contained therein are legal conclusions solely within the purview of the court and for its determination, and no answer is therefore required. To the extent an answer is required, said allegations are denied.

25. Answering Paragraph 25 of the complaint, Defendant alleges that the allegations contained therein are legal conclusions solely within the purview of the court and for its determination, and no answer is therefore required. To the extent an answer is required, said allegations are denied.

26. Answering Paragraph 26 of the complaint, Defendant alleges that the allegations contained therein are legal conclusions solely within the purview of the court and for its determination, and no answer is therefore required. To the extent an answer is required, said allegations are denied.

27. Answering Paragraph 27 of the complaint, Defendant realleges Paragraphs 1-26 of its answers to Paragraphs 1-26 of Plaintiff's Complaint, and by this reference incorporates them herein as though set forth in full.

28. Answering Paragraph 28 of the complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and based thereon, denies generally and specifically each, all and every allegation contained therein.

29. Answering Paragraph 29 of the complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and based thereon, denies generally and specifically each, all and every allegation contained therein.

30. Answering Paragraph 30 of the complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and based thereon, denies generally and specifically each, all and every allegation contained therein.

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31. Answering Paragraph 31 of the complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and based thereon, denies generally and specifically each, all and every allegation contained therein. Furthermore, Defendant alleges that the allegations contained therein are legal conclusions solely within the purview of the court and for its determination, and no answer is therefore required. To the extent an answer is required, said allegations are denied.

32. Answering Paragraph 32 of the complaint, Defendant alleges that the allegations contained therein are legal conclusions solely within the purview of the court and for its determination, and no answer is therefore required. To the extent an answer is required, said allegations are denied

AFFIRMATIVE AND OTHER DEFENSES

All allegations not here before specifically admitted, denied, or modified, are hereby denied. For further and separate answer, Defendant alleges as follows:

FIRST DEFENSE

The Court lacks jurisdiction over the subject matter of this action.

SECOND DEFENSE

Occurrences prior to the alleged acts of defendant's employees caused, compounded or created the injuries with reference to the plaintiff, for which pre-existing occurrences the United States is not liable.

THIRD DEFENSE

Any damages which Plaintiff may have sustained were proximately caused solely by the independent, intervening and superseding acts and omissions of a third person, or were caused jointly by the contributory negligence of Plaintiff and by the independent, intervening and superseding acts or omissions of a third person.

FOURTH DEFENSE

The defendant owed no legal duty of any nature to the plaintiff regarding the circumstances complained of.

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FIFTH DEFENSE

Any injury sustained by plaintiff was not caused by carelessness or negligence on the part of the defendant, its agents, servants or employees, but was caused solely by and through the carelessness and negligence of the plaintiff.

SIXTH DEFENSE

Defendant United States of America is the only proper defendant under the FTCA.

SEVENTH DEFENSE

The injuries and damages alleged by Plaintiff were not proximately caused by a negligent or wrongful act or omission on the part of an employee or agent of the United States.

EIGHTH DEFENSE

The acts complained of were performed by an independent contractor, for which the United States is not liable under the FTCA.

WHEREFORE, Defendant having fully answered Plaintiff's Complaint filed herein, pray that Plaintiff take nothing by reason of his suit herein, that judgment be rendered in favor of Defendant, for costs of suit herein incurred, and or such other and further relief as this Court may deem proper.

DATED: June 27, 2008.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

s/David B. Wallace
DAVID B. WALLACE
Assistant U.S. Attorney
Email: Dave.Wallace@usdoj.gov

Counsel for Defendant

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MIGUEL TORRES-ALONZO, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	CIVIL NO. 08CV0242-WQH (NLS) **CERTIFICATE OF SERVICE**

I, David B. Wallace, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **Answer to Complaint** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Gerry Singleton
SINGLETON & ASSOCIATES
1950 Fifth Avenue
Suite 200
San Diego, CA 92101

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 27, 2008.

s/*David B. Wallace*
DAVID B. WALLACE